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November 18, 2009

PARTIES OF RECORD

RE: Case No. 2009-00044

Enclosed is information regarding the Muhlenberg County Joint Planning Commission. Questions regarding this memorandum should be directed to Tiffany Bowman at (502) 564-3940, extension 465 or by e-mail at TiffanyJ.Bowman@ky.gov.

Sincerely,



Jeff R. Derouen
Executive Director

JD/tjb

enc.

INTRA-AGENCY MEMORANDUM
KENTUCKY PUBLIC SERVICE COMMISSION

TO: Main Case File – Case No. 2009-00044

FROM: Tiffany Bowman
Commission Staff Attorney

DATE: November 18, 2009

SUBJECT: Details on the Muhlenberg County Joint Planning Commission

The attached information was provided to Commission Staff by the Muhlenberg County Attorney and is being placed into the public file for this proceeding and will be distributed to the Parties of Record.

The attached information contains the following:

1. Agreement Establishing a Joint City-County Planning Unit, a Joint City County Planning Commission and Boards of Adjustment;
2. County of Muhlenberg Ordinance No. 09-23-07, titled "An Ordinance Relating to the Regulation of Cellular Antenna Towers in Muhlenberg County, KY"



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DELIVER TO: Tiffany Bowman

FAX NUMBER TRANSMITTED TO: 502-564-7279

This is page 1 of a(n) 20 page transmission.

Date:9-29-2009 Time:10:50 CDT

TRANSMITTED BY: Heather

COMMENTS:

AGREEMENT ESTABLISHING A JOINT CITY-COUNTY
PLANNING UNIT, A JOINT CITY COUNTY PLANNING
COMMISSION AND BOARDS OF ADJUSTMENT

THIS AGREEMENT made and entered into this 8 day of Feb., 1972

by and between the Cities of Central City, Drakesboro, Greenville, and Powderly, Kentucky and the County of Muhlenberg, Kentucky, hereinafter referred to respectively as Cities and County.

WITNESSETH:

THAT WHEREAS, the Cities and the County have determined to establish a "Joint Planning Unit" within the purview of Chapter 100 of the Kentucky Revised Statutes, as amended, under terms and conditions mutually acceptable.

NOW THEREFORE, in consideration of the premises, and in conformity with the requirements of said Statute, the Cities and the County agree and stipulate as follows:

SECTION 1 - PURPOSES AND OBJECTIVES

1. Purposes and Objectives - The Cities and the County hereby declare that in the execution of this agreement and in the fulfillment of their respective obligations hereunder, they are acting with the following purposes and objectives which shall not be considered exclusive, and which are stated merely for the purpose of demonstrating to some extent the intent of the parties.

A. To secure the maximum economical, physical, and social welfare for the Cities and County and their citizens through the thoughtful and planned use and development of land, buildings, thoroughfares, and public utilities.

B. To encourage the establishment of a planning program, the provision of facilities and personnel, therefore, the study of needs of the affected areas in the field of planning and implementation and enforcement of all regulations lawfully established and promulgated pursuant to the provisions of said Chapter 100 of the Kentucky Revised Statutes.

C. To encourage cooperation between Cities and County and the citizens and officials thereof.

D. The Cities and the County and the appropriate officials thereof shall lend their best efforts in the attainment and fulfillment of said purpose and objectives.

SECTION II - JOINT PLANNING UNIT

1. Joint Planning Unit Created - The Cities of Central City, Drakesboro, Greenville, and Powderly, and the County of Muhlenberg do hereby form a joint planning unit by combining their planning operations into a joint city-county planning program.

2. Area of Jurisdiction - The area of jurisdiction of the joint city-county planning operation shall include all of the City of Central City, the City of Drakesboro, the City of Greenville, and the City of Powderly, and the County of Muhlenberg.

SECTION III - JOINT PLANNING COMMISSION

1. Joint Planning Commission Created - A joint planning commission is hereby created which shall be known as the Muhlenberg Joint City-County Planning Commission.

Upon the appointment and subsequent approval of members, election of officers and adoption of its by-laws, its existence shall begin subject to the provisions of KRS Chapter 100. The Commission may engage in planning operations within its jurisdiction which shall include all of the City of Central City, the City of Drakesboro, the City of Greenville, and the City of Powderly, and the County of Muhlenberg except where otherwise provided for by KRS Chapter 100. This Commission shall have the powers, duties and responsibilities set forth in KRS Chapter 100.

One Muhlenberg County member for a term ending March 1, 1974
One Powderly member for a term ending March 1, 1974

One Muhlenberg County member for a term ending March 1, 1975
One Drakesboro member for a term ending March 1, 1975

One Greenville member for a term ending March 1, 1976
One Central City member for a term ending March 1, 1976

F. The Commission shall elect a Chairman, and any other officers which it deems necessary from among its citizen members. The term of office shall be one year with eligibility for re-election. The Commission may employ a staff as it may deem necessary for its work and may contract with professional planners and other parties for such services as it may require.

G. The Commission shall conduct each year at least six regular meetings for the transaction of its business. The by-laws adopted by the Commission shall reflect the schedule of regular meetings, the manner in which notice shall be given; date; time; place; and the subject or subjects to be discussed. All members, except the Chairman, shall be entitled to vote and five members of the total membership including the Chairman or acting Chairman shall constitute a quorum. After a quorum has been established, a simple majority of that can transact any official business except in those instances where there is to be an adoption or amendment of the Commission's by-laws or elements of the comprehensive plan or regulations, then a vote of the simple majority of the total membership shall be necessary. In any case of a tie vote or deadlock, the Chairman shall then have the power to vote and shall cast his vote and break the tie or deadlock. The Commission shall adopt and approve its by-laws before it may properly transact any business. The by-laws shall set forth the procedures, rules, and regulations necessary for the Commission to conduct its business.

H. The Commission shall have general powers necessary to carry out its functions in accordance with this agreement and KRS Chapter 100. The Commission may be assigned any powers, duties and functions related to urban renewal or public housing by the legislative bodies of the participating cities or county. The Commission shall have the power to receive, hold, administer, and disburse funds which it may lawfully receive from any and every source. Expenditures of such funds shall be in accordance with the formal action of the Commission, or pursuant to regulations lawfully established by the Commission. Officials, appointed officials and employees of the Cities and County may be authorized and/or directed by the Mayors and the County Judge to attend meetings of the Commission.

2. Joint Planning Commission Membership - The Commission shall consist of a total of 9 members with at least 6 of the members being citizen members.

A. Non-citizen members may be any elected official, appointed official or public employee of the Cities or County.

B. Citizen members may be any citizen who is not an elected official, appointed official or public employee of the Cities or County.

C. The Mayors and County Judge shall appoint the members of the Commission with the approval of their respective legislative bodies. The citizen members appointed by the Mayors shall be residents within the corporate limits of their respective cities and the citizen members appointed by the County Judge shall be residents of the portion of the County lying outside the boundaries of all legally incorporated cities but inside the area comprising the territorial jurisdiction of the Commission.

D. Commission members shall be appointed according to the following:

<u>2</u>	Central City Members
<u>1</u>	Drakesboro Member
<u>2</u>	Greenville Members
<u>1</u>	Powderly Member
<u>3</u>	Muhlenberg County Members

E. The term of office of all elected public officials shall be the same as their official tenure in office. For other members, the term shall be four years, ending on March 1 of the designated year. The term of those first appointed shall be staggered so that a proportionate number serve one, two, three, and four years respectively, with later appointments or re-appointments continuing the staggered pattern. All vacancies whether by resignation, dismissal or expiration of the term of office shall be filled within sixty days by the appropriate appointing authority or as otherwise provided for in KRS Chapter 100.

The oath of office shall be administered to all members of the Commission before entering upon their duties. The oath shall be administered as provided by law. Any member may be removed by the appropriate appointing authority for inefficiency, neglect of duty, malfeasance, or conflict of interest. The removed members shall have the right to appeal in the manner prescribed by KRS Chapter 100.

The terms of those first appointed shall be staggered as follows:

One Muhlenberg County Member for a term ending March 1, 1973
One Greenville Member for a term ending March 1, 1973
One Central City Member for a term ending March 1, 1973

and otherwise to assist the Commission in advisory capacities, when deemed necessary by the members of the Commission, for the preparation of plans, and for the aids to help implement the plans and shall be as described in Chapter 100 of the Kentucky Revised Statutes and as may be amended in the future.

1. All cost incurred by the Commission not met by Federal and/or State monies, shall be paid by the participating cities and the county as follows: Muhlenberg County 55%, Central City 20%, Drakesboro 3%, Greenville 20%, and Powderly 2%. Special costs incurred by the Commission that are incurred primarily for the benefit of one or more participating units, shall be met by the political units directly benefited; provided that this exception shall not apply to planning services contracted by the Commission intended to study the entire land area of all participating units.

SECTION IV - BOARDS OF ADJUSTMENT

1. Boards of Adjustment Created - A Board of Adjustment is hereby created for each of the following political subdivisions; the City of Central City, the City of Drakesboro, the City of Greenville, and the City of Powderly, and the County of Muhlenberg, Kentucky. Each Board shall be known as the Board of Adjustment for the respective political subdivision that it serves. (i.e.) The Board of Adjustment for the City of Central City, the Board of Adjustment for the City of Drakesboro, the Board of Adjustment for the City of Greenville, and the Board of Adjustment for the City of Powderly, and the Board of Adjustment for the County of Muhlenberg. Each Board shall have the powers, duties and responsibilities as set forth in KRS Chapter 100.

A. The jurisdiction of the Boards of Adjustment shall be as follows:

a. The Board of Adjustment for the City of Central City. Jurisdiction shall be within the legal corporate limits of the City of Central City, as exists or may be amended in the future.

b. The Board of Adjustment for the City of Drakesboro. Jurisdiction shall be within the legal corporate limits of the City of Drakesboro, as exists or may be amended in the future.

c. The Board of Adjustment for the City of Greenville. Jurisdiction shall be within the legal corporate limits of the City of Greenville, as exists or may be amended in the future.

d. The Board of Adjustment for the City of Powderly.
Jurisdiction shall be within the legal corporate limits of the City of Powderly, as exists or may be amended in the future.

e. The Board of Adjustment for the County of Muhlenberg.
Jurisdiction shall be within all of the legal territorial boundaries of the County excluding the area within the legal corporate limits of the Cities of Central City, Drakesboro, Greenville, and Powderly, as exists or may be amended in the future.

B. The membership, appointment and term of office of the Board of Adjustment is as follows:

a. Board of Adjustment for the City of Central City.
The Board shall consist of 3 citizen members, 1 of which shall be citizen member of the Planning Commission and resident of the City of Central City. The Mayor of Central City shall appoint the members of the Board with the approval of the City of Central City's legislative body. The term of office of members first appointed shall be staggered so that a proportionate number serve one, two, three, and four years respectively, with later appointments or re-appointments continuing the staggered pattern.

b. Board of Adjustment for the City of Drakesboro.
The Board shall consist of 3 citizen members, 1 of which shall be citizen member of the Planning Commission and resident of the City of Drakesboro. The Mayor of Drakesboro shall appoint the members of the Board with the approval of the City of Drakesboro's legislative body. The term of office of members first appointed shall be staggered so that a proportionate number serve one, two, three, and four years respectively, with later appointments or re-appointments continuing the staggered pattern.

c. Board of Adjustment for the City of Greenville.
The Board shall consist of 3 citizen members, 1 of which shall be citizen member of the Planning Commission and resident of the City of Greenville. The Mayor of Greenville shall appoint the members of the Board with the approval of the City of Greenville's legislative body. The term of office of members first appointed shall be staggered so that a proportionate number serve one, two, three, and four years respectively, with later appointments or re-appointments continuing the staggered pattern.

d. Board of Adjustment for the City of Powderly.

The Board shall consist of 3 citizen members, 1 of which shall be citizen member of the Planning Commission and resident of the City of Powderly. The Mayor of Powderly shall appoint the members of the Board with the approval of the City of Powderly's legislative body. The term of office of members first appointed shall be staggered so that a proportionate number serve one, two, three, and four years respectively, with later appointments or re-appointments continuing the staggered pattern.

e. Board of Adjustment for the County of Muhlenberg

The Board shall consist of 3 citizen members, 1 of which shall be citizen member of the Planning Commission and resident of the County of Muhlenberg living within the legal territorial boundaries of Muhlenberg County, excluding the area within the legal corporate limits of the City of Central City, the City of Drakesboro, the City of Greenville, and the City of Powderly, as exist or may be amended in the future. The County Judge of Muhlenberg County shall appoint the members of the Board with the approval of the County of Muhlenberg's legislative body. The term of office of all Board members first appointed shall be staggered so that a proportionate number serve one, two, three and four years respectively, with later appointments or re-appointments continuing the staggered pattern.

G. Reimbursement for expenses lawfully incurred by a member of the Boards of Adjustment in the performance of his duties may be authorized by formal action of the respective Board.

No member of the Board shall receive any compensation.

D. The Boards of Adjustment shall have the power to receive, hold, administer and disburse funds which it may lawfully receive from any and every source. Prior to the beginning of each Board's fiscal year, the respective Board may adopt a budget which shall be presented to the legislative body of the political subdivision in which it has jurisdiction for the purpose of receiving funds for the cost of its operation.

Expenditures of such appropriations and funds shall be in accordance with the formal action of the Board or pursuant to the regulations lawfully established by the Board. All other details of the Board's operation which are necessary for the establishment and administration of the Boards shall be as described in KRS Chapter 100 and as may be amended in the future.

SECTION V - EFFECTIVE DATE AND PERIOD

1. Effective Date and Period - This agreement shall be in full force and effect when executed by the parties to the agreement and then filed in the office

of the County Court Clerk of Muhlenberg County. This agreement shall be in existence for as long as at least two of the original signators are operating under the combination despite the fact that other signators have withdrawn from the unit.

SECTION VI - SEPARABILITY CLAUSE

1. Separability Clause - Should any section or provision of this agreement be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the agreement as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

SECTION VIII - AMENDMENT AND EXECUTION

1. Amendment - This agreement may be amended from time to time by mutual agreement of all signators participating in the unit, with such amended agreement filed in the office of the County Clerk of Muhlenberg County.

2. Execution - IN WITNESS WHEREOF, the undersigned parties each acting by and through their duly authorized officials, have caused the Agreement to be executed as of this 8 day of Feb, 1972.

CITY OF CENTRAL CITY

BY [Signature]

MAYOR

CITY OF GREENVILLE

BY [Signature]

MAYOR

MUHLENBERG COUNTY FISCAL COURT

BY [Signature]

COUNTY JUDGE

CITY OF DRAKESBORO

BY [Signature]

MAYOR

CITY OF POWDERLY

BY [Signature]

MAYOR

Adopted by the Central City Council on 2/8/72
Adopted by the Drakesboro City Council on 2-7-72
Adopted by the Greenville City Council on 2/7/72
Adopted by the Powderly City Council on 2-5-1972
Adopted by the Muhlenberg Fiscal Court on 1-27-1972

Filed in the office of the County Court Clerk of Muhlenberg County on

COMMONWEALTH OF KENTUCKY
COUNTY OF MUHLENBERG
ORDINANCE NO. 09-23-07

**AN ORDINANCE RELATING TO THE REGULATION OF CELLULAR ANTENNA
TOWERS IN MUHLENBERG COUNTY, KY**

WHEREAS, KRS 100.985 to 100.987 and other applicable laws provide that Fiscal Court may enact ordinances and issue regulations relating to cellular antenna towers;

**NOW, THEREFORE, BE IT ORDAINED BY THE FISCAL COURT OF THE COUNTY
OF MUHLENBERG, COMMONWEALTH OF KENTUCKY, AS FOLLOWS:**

I. DEFINITIONS

A. Cellular Antenna: Any structure or device used to collect or radiate electromagnetic waves, including both directional antennas, such as panels, microwave dishes and satellite dishes, and omni-directional antennas, such as whips, at frequencies on the electromagnetic spectrum as the FCC from time to time may designate, used for cellular telecommunications services and/or personal communications services, but not including such structures or devices when used for the broadcast of television of AM or FM radio stations or for citizens band or amateur radio use. Examples of cellular telecommunications or personal communications services include, but are not limited to, cellular telephone, paging, public safety, data transmission, Specialized Mobile Radio, Enhanced Specialized Mobile Radio, and other commercial private radio services.

B. Cellular Antenna Tower: Any structure that is designed and constructed primarily for the purpose of supporting one or more cellular antennas. This includes guyed towers, lattice towers, monopoles, alternative cellular antenna tower structures and towers taller than 15 feet constructed on the top of another building, along with any separate building on the lot used to house any supporting electronic equipment.

C. Co-Location: Locating one or more cellular antennas for more than one provider on a single cellular antenna tower or alternative cellular antenna tower structure on a single lot.

D. Height, Antenna Tower: The distance from the anchored base of the tower, whether on the top of another building or at grade, to the highest point of the structure, even if the highest point is the top of an antenna.

E. Telecommunications Facility: The lot, tract, or parcel of land that contains the telecommunications antenna, its support structure, any accessory buildings, and parking, and may include other uses associated with and ancillary to telecommunications transmission.

II. ANTENNA TOWERS (CELLULAR ANTENNA TOWERS OR ALTERNATIVE TOWER STRUCTURES)

An antenna tower for cellular telecommunications services or personal communications services may be allowed after receiving Planning Commission review and approval in accordance with this section. Co-location of service facilities is preferred. Co-location objectives may be satisfied by configuration of new facilities for multiple carriers or by co-location on existing facilities. Any request for review of a proposal to construct such an antenna tower or to re-configure, enlarge or re-construct an existing antenna tower, shall be made only in accordance with Section III.

However, if the property is subject to any encumbrances, zoning restrictions, conditional use permits, or the like, the property owner shall obtain all necessary approvals of any modification request, and submit proof of such approvals simultaneously with the antenna tower application

III. GENERAL PROVISIONS

A. Notice of Filing.

Notice of any request for approval of a uniform application to construct a cellular antenna tower filed under this section shall be sent by the applicant by United States Certified Mail to the owner of every parcel of property within five hundred (500) feet of the tower, to the owner of every parcel of property adjoining at any point the property from which the applicant proposes to create the tower site, and to the owner of every parcel of property directly across the street from said property. Notice shall also be sent by the applicant to the Mayor of the City in which the tower site is proposed, if the tower is proposed to be located within the corporate limits of a City or to the County Judge/Executive, if the tower is proposed to be located in the unincorporated area of Muhlenberg County.

Such notices shall include the Planning Commission Docket Number under which the request will be reviewed, the address and telephone number of the Planning Commission's office, and a statement that the recipient has the right to submit testimony to the Planning Commission, either in writing or by appearance at any Committee or Commission meeting scheduled for review of the request.

B. Notification.

The applicant shall furnish to the Planning Commission with the attorney certification a copy of the notices required by subsection A above and the names and addresses of the owners of property and the governmental officials to whom the required notices will be sent. Records maintained by the Property Valuation Administrator may be relied upon to determine the identity and address of said owners. If the property is in a cooperative form of ownership or has co-owners, notice may be in the manner described in KRS 100.214 (2) for such ownership. The applicant shall obtain the name and address of the applicable governmental officials from the Planning Commission through its authorized representative.

C. Posting Property.

Notice of the filing of the request shall be posted conspicuously in a visible location on the proposed site of the telecommunications facility and in a visible location on the nearest public road at the same time that notice by first class mail is sent. The applicant shall certify that the postings have been made. The notices shall remain until the Planning Commission issues its final decision or 60 days has passed since acceptance of the request by the Planning Commission, whichever occurs first. The posting shall be as follows:

1. Each sign shall be at least two (2) feet by four (4) feet in size;
2. Each sign shall state: "(Name of applicant) proposes to construct a telecommunications tower and/or facility on this site. If you have questions, please contact (name and address of applicant). Information on the Planning Commission's review of this proposal may be obtained by calling the Planning Commission at (270) 754-5097. Please refer to the request name or number in all inquiries."
3. In both posted notices, the words "proposes to construct a telecommunications tower and/or facility" shall be printed in letters at least (4) inches in height, and the words "Joint Muhlenberg County Planning Commission at (270) 754-5097" shall be painted in letters at least one (1) inch in height. Both signs shall be constructed of durable, weatherproof material.
4. Any such signs may also include any notices required to be made by regulations of the Kentucky Public Service Commission including 807 KAR 5:063 (as now in effect, or as amended).

D. Uniform Application Documentation.

Any request filed under this Section III for review of a proposal to construct a cellular antenna tower shall include the following:

1. The full name and address of the applicant;
2. The applicant's articles of incorporation, if applicable;
3. A geotechnical investigation report, signed and sealed by a professional engineer registered in Kentucky, that includes boring logs and foundation design recommendations;
4. A written report, prepared by a professional engineer or land surveyor, of findings as to the proximity of the proposed site to flood hazard areas;
5. Clear directions from the county seat to the proposed site, including highway numbers and street names, if applicable, with the telephone number of the person who prepared the directions;

6. The lease or sale agreement for the property on which the tower is proposed to be located, except that, if the agreement has been filed in abbreviated form with the county clerk, an applicant may file a copy of the agreement as recorded by the county clerk and, if applicable, the portion of the agreement demonstrating compliance with KRS 100.987(2);
7. The identity and qualifications of each person directly responsible for the design and construction of the proposed tower;
8. A site development plan or survey, signed and sealed by a professional engineer registered in Kentucky, that shows the proposed location of the tower and all easements and existing structures within five hundred (500) feet of the proposed site on the property on which the tower will be located, and all easements and existing structures within two hundred (200) feet of the access drive, including the intersection with the public street system;
9. A vertical profile sketch of the tower, signed and sealed by a professional engineer registered in Kentucky, indicating the height of the tower and the placement of all antennas;
10. The tower foundation design plans and a description of the standard according to which the tower was designed, signed, and sealed by a professional engineer registered in Kentucky;
11. A map, drawn to scale no less than one (1) inch equals two hundred (200) feet, that identifies every structure and every owner of real estate within five hundred (500) feet of the proposed tower;
12. A statement that every person who, according to the records of the property valuation administrator, owns property within five hundred (500) feet of the proposed tower or property contiguous to the site upon which the tower is proposed to be constructed, has been:
 - a) Notified by certified mail, return receipt requested, of the proposed construction, which notice shall include a map of the location of the proposed construction;
 - b) Given the telephone number and address of the local planning commission; and
 - c) Informed of his or her right to participate and submit testimony, either in writing or by attendance at the planning commission's proceedings on the application.
13. A list of the property owners who received the notice, together with copies of the certified letters sent to the listed property owners;

14. A statement that the chief executive officer of the affected local governments and their legislative bodies have been notified, in writing, of the proposed construction;

15. A copy of the notice sent to the chief executive officer of the affected local governments and their legislative bodies;

16. A statement that:

a) A written notice, of durable material at least two (2) feet by four (4) feet in size, stating that "[Name of applicant] proposes to construct a telecommunications tower on this site" and including the addresses and telephone numbers of the applicant and the planning commission, has been posted and shall remain in a visible location on the proposed site until final disposition of the application; and

b) A written notice, at least two (2) feet by four (4) feet in size, stating that "[Name of applicant] proposes to construct a telecommunications tower near this site" and including the addresses and telephone numbers of the applicant and the planning commission, has been posted on the public road nearest the site;

17. A statement that notice of the location of the proposed construction has been published in a newspaper of general circulation in the county in which the construction is proposed;

18. A brief description of the character of the general area in which the tower is proposed to be constructed, which includes the existing land use for the specific property involved;

19. A statement that the applicant has considered the likely effects of the installation on nearby land uses and values and has concluded that there is no more suitable location reasonably available from which adequate service to the area can be provided, and that there is no reasonably available opportunity to locate its antennas and related facilities on an existing structure, including documentation of attempts to locate its antennas and related facilities on an existing structure, if any, with supporting radio frequency analysis, where applicable, and a statement indicating that the applicant attempted to locate its antennas and related facilities on a tower designed to host multiple wireless service providers' facilities or on an existing structure, such as a telecommunications tower or other suitable structure capable of supporting the applicant's antennas and related facilities; and

20. A map of the area in which the tower is proposed to be located, that is drawn to scale, and that clearly depicts the necessary search area within which a cellular antenna tower should, pursuant to radio frequency requirements, be located.

21. An indication that the information that the applicant is required by 807 KAR 5:063, (as now in effect, or as amended) to submit to the Commonwealth of Kentucky Public Service Commission is available to be sent promptly to the Planning Commission upon its written request;

22. A copy of the applicant's FCC license, or, if the applicant is not an FCC license holder, a copy of at least one letter of commitment from an FCC license holder to locate at least one antenna on the applicant's tower.

23. Unless co-locating, certification, supported by evidence, that co-location of the proposed telecommunications facility with an existing approved tower or facility cannot be reasonably accommodated or that a new facility configured for multiple carriers. The applicant's certification shall include a listing of all existing towers and facilities within a one (1) mile radius of the proposed site, a description of each existing site, and a discussion of the ability or inability to reasonably co-locate on each existing site.

Reasons for not co-locating on a site would include, but not be limited to, the following:

1. No existing towers or facilities are located within the above radius of the site;
2. Existing towers or facilities are not of sufficient height to meet the applicant's engineering requirements;
3. Existing towers or facilities do not have sufficient structural strength to support applicant's proposed antenna and related equipment;
4. Applicant's planned equipment would cause radio frequency interference with other existing or planned equipment of the tower or facility, or the existing or planned equipment of the tower or facility would cause interference with the applicant's planned equipment which cannot be reasonably prevented;
5. Unwillingness of the owner of the existing tower or facility to entertain a reasonable co-location proposal;
6. Existing towers or facilities do not provide an acceptable location for requisite coverage for the applicant's communications network.

24. Unless co-locating, certification that there is no other site which is materially better from a land use perspective within the immediate area for the location of the telecommunications facility. The applicant's certification shall include a listing of potential sites within a one (1) mile radius of the proposed site, a description of each potential site, and a discussion of the ability or inability of the site to host a telecommunications facility.

25. Reasons for not locating on a potential site would include, but not be limited to, the following:

1. Unwillingness of the site owner to entertain a telecommunications facility;
2. Economically impractical;
3. Topographic limitations of the site;
4. Adjacent impediments that would obstruct adequate cellular telecommunications and/or personal communications transmission;
5. Physical site constraints that would preclude the construction of a telecommunications facility;
6. Technical limitations of the telecommunications system;
7. Existing potential sites do not provide an acceptable location for requisite coverage for the applicant's communications network;

26. At the time the applicant files an application for review under these regulations, a listing of the present locations of the applicant's telecommunications towers and/or facilities in Muhlenberg County, to include co-location sites.

27. A pictorial representation, such as a silhouette drawing, photograph, etc. of the proposed telecommunications facility from a point 150 to 600 feet from the facility for at least two of the four compass directions, (to the extent practicable considering vegetation, buildings, or other obstructions) showing the relationship of the tower and/or facilities against the massing of surrounding structures, trees, and other intervening visual masses. Notwithstanding the foregoing, the applicant shall not be required to purchase temporary easement or license rights to allow it to make drawings or photographs from particular vantage points. A reasonable pictorial representation of the site may be substituted for the aforementioned specified compass direction representations if it is not practical to comply with the express terms of this paragraph and the Planning Commission is notified in writing of such practical difficulty.

28. All new telecommunications facilities shall be configured to accommodate at least two telecommunications providers.

E. Processing of Applications.

Applications for the construction of cellular antenna towers shall be processed as follows:

1. The Planning Commission shall review the uniform application to determine whether it is in agreement with these Cellular Antenna Tower Regulations.
2. At least one public hearing on the proposal shall be held, at which hearing interested parties and citizens shall have the opportunity to be heard. Notice of the time and place of such hearing shall be published at least once, in The Leader News, provided that one publication occurs not less than seven calendar days nor more than 21 calendar days before the occurrence of such hearing.
3. Upon holding the hearing, the Planning Commission shall, within 60 days commencing from the date that the application is received by the Planning Commission, or within a date specified in a written agreement between the Planning commission and the applicant, make its final decision to approve or disapprove the uniform application. If the Planning Commission fails to issue a final decision within 60 days, and if there is no written agreement between the Planning Commission and the utility to a specific date of the Planning commission to issue a decision, it shall be presumed that the Planning Commission has approved the utility's uniform application.
4. If the Planning Commission disapproves of the proposed construction, it shall state the reasons for disapproval in its written decision and may make suggestions which, in its opinion, better accomplish the objectives of the Planning Commission and the applicant. No permit for construction of a cellular antenna tower shall be issued until the Planning Commission approves the uniform application or the sixty (60) day time period has expired, which ever occurs first.
5. Upon approval of an application for the construction of a cellular antenna tower by a Planning Commission, the applicant shall notify the Public service Commission within ten (10) working days of the approval. The notice to the Public Service Commission shall include a map showing the location of the construction site. If an applicant fails to file notice of an approved uniform application with the Public Service Commission, the applicant shall be prohibited from beginning construction on the cellular antenna tower until such notice has been made.

F. Design Standards.

At the time of filing of a request under this Section III, the applicant shall provide information demonstrating compliance with the requirements listed below. Where the Planning Commission finds that the conditions or circumstances relating to the particular application are such that one or more of the requirements listed below are not necessary or desirable for the protection of surrounding property or the public health, safety, or welfare, either at the time of application or in the foreseeable future, and that such special conditions and circumstances make one or more said requirements unduly burdensome, the Planning Commission may modify or waive such requirement, either permanently or on a temporary basis. Any such modification or waiver shall be requested

by the applicant, and the applicant shall submit a written justification for each requested modification or waiver.

1. If the site is an easement, the boundaries of the tract on which the easement is located shall be treated as the property boundaries.
2. Any monopole, guyed, lattice, or similar type cellular antenna tower and any alternative cellular antenna tower structure similar to these towers, such as light poles, shall be maintained in either galvanized steel finish or be painted light gray or light blue in color. Alternate sections of aviation orange and aviation white paint may be used only when the FAA finds that none of the alternatives to such marking are acceptable.
3. Towers shall not be artificially lighted except as required by the Federal Aviation Administration (FAA). Upon commencement of construction of a cellular antenna tower, in cases where there are residential uses located within a distance which is three hundred (300) percent of the height of the tower from the tower and when required by federal law, dual mode lighting shall be requested from the FAA.
4. The site shall not be staffed. Authorized personnel may periodically visit the site for maintenance, equipment modification, or repairs. There shall be provided on site an area sufficient to accommodate the parking of an authorized service vehicle.
5. The site shall be enclosed by a security fence, and the fence may be located in any required yard at no less than eight feet.
6. If the use of any cellular antenna or cellular antenna tower or alternative cellular antenna tower structure is discontinued, the owner shall provide the Planning Commission with a copy of the notice to the FCC of intent to cease operations within 30 days of such notice to the FCC. If the cellular antenna or cellular antenna tower or alternative cellular antenna tower structure will not be reused, the owner shall have 180 days from submittal of the FCC notice to the Planning Commission to apply for a demolition permit and remove the antenna or tower that will not be reused. If the cellular antenna or cellular antenna tower or alternative cellular antenna tower structure is to be reused, the owner shall have no more than twelve (12) months from submittal of the FCC notice to the Planning Commission in which to commence new operation of the antenna or tower to be reused, unless an extension of time has been granted by the Planning Commission. Upon failure to commence new operation of the antenna or tower that is to be reused within twelve (12) months, the cellular antenna or cellular antenna tower or alternative cellular antenna tower structure shall be presumed abandoned, and the owner shall apply within 90 days of the expiration of the twelve (12) month period, a demolition permit and remove the antenna or tower that is presumed abandoned within 60 days of obtaining the demolition permit. If the owner fails to remove an antenna or tower in the time provided by this

paragraph, the Planning Commission may, on grounds of public safety, health, and welfare, cause the demolition and removal of the antenna or tower and recover its costs of demolition and removal. The Planning Commission, at time of application for construction, may require posting of a bond covering the cost of removal of the antenna or tower; the bond to be forfeited to the Planning Commission upon failure to remove the antenna or tower in a timely manner as required above.

The only signs allowed shall be emergency information signs, owner contact information, warning or safety instructions, and signs required by a federal, state, or local agency. Such signs shall not exceed five (5) square feet in area.

7. The site shall be landscaped in a manner consistent with the surrounding landscape, as determined by the owner of the property or at the direction of the planning commission.

G. Existing Telecommunications Facilities.

Telecommunications facilities in existence on the date of the adoption of this ordinance which do not comply with this ordinance ("existing telecommunications facilities") are subject to the following provisions:

1. Existing telecommunication facilities may continue in use for the purpose now used, but may not be expanded or replaced without complying with this ordinance, except as further provided in this section.
2. Existing telecommunications facilities which are hereafter damaged or destroyed due to any reason or cause may be repaired and restored to their former use, location and physical dimensions.
3. The owner of any existing telecommunications facility may replace, repair, rebuild and/or expand such telecommunications facility to accommodate co-located antennas or facilities, or to upgrade the facilities to current engineering, technological or communications standards by obtaining a building permit therefore, without having to request local zoning approvals, so long as such facilities are not increased in height by more than 50% and or setbacks are not decreased by more than 50%.
4. Any such replacement, repair, reconstruction or enlargement shall not violate the design standards described in subsection E above beyond that existing at the date of the adoption of this ordinance.

H. Confidentiality.

With the exception of the map or other information that specifically identifies the proposed location of the cellular antenna tower then being reviewed, all other information contained in the uniform application and any updates shall be recognized as confidential

and proprietary within the meaning of KRS 61.878. The Planning Commission shall deny any public request for the inspection of such information, whether submitted under Kentucky's Open Records Act or otherwise, unless ordered to disclose such records by a court of competent jurisdiction or unless confidentiality is waived in writing by the applicant.

I. Application Fee.

An applicant for the construction of cellular antenna towers shall pay an application fee of \$2,500.00 per application.

IV. SEVERABILITY.

If any clause, section, or other part of this Ordinance shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby, but shall remain in full force and effect.

V. CONFLICTS.

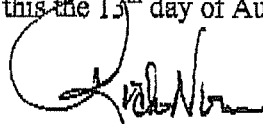
All ordinances or parts of ordinances in conflict herewith are hereby repealed.

VI. Effective Date.

This ordinance shall be read on two separate days and will become effective upon publication pursuant to KRS Chapter 424.

Upon motion by David James, seconded by Keith Dukes, and approved at first reading by the Muhlenberg County Fiscal Court, on the 23rd day of July, 2009.

Upon motion by Tommy Watkins, seconded by David James, and enacted at a meeting of the Muhlenberg County Fiscal Court, on this the 13th day of August, 2009.



RICK NEWMAN
MUHLENBERG COUNTY JUDGE-EXECUTIVE

ATTEST:



GAYLAN SPURLIN
MUHLENBERG COUNTY CLERK